IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.2698 OF 2004

M/s.Nikivik Electronics Pvt.Ltd. .. Petitioner

v/s.

Union of India & ors. .. Respondents

Mr.J. Reis i/by Mr.S.K. Sthalekar for petitioner.

Mr.S.S.Pakale for respondents.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 25th November, 2004

P.C.

Heard.

2. Rule. Returnable forthwith.

3. The advocate for respondents waives service.

4. Rule is treated on board for final hearing.

5. The impugned order dated 8th March, 1999 is founded on the ground that the order dated 17th December, 1998 was not complied with by the present petitioner. By the order dated 17th December, 1998, the petitioner was directed to deposit 50% amount of disputed amount as pre-deposit.

6. That the order dated 17th December, 1998 was set aside by the Division Bench of this court by order dated 1st February, 1999 in writ petition No.122 of 1999 is not in dispute. This fact seems to have been overlooked by the Commissioner of Central Excise (Appeals). The order dated 1st February, 1999 was passed by this court after hearing the counsel for the respondents. It, therefore, cannot be said that the order dated 1st February, 1999 setting aside the order dated 17th December, 1998 was not in the knowledge of the Commissioner of Central Excise (Appeals).

7. In the circumstances, therefore, the order dated 8th March, 1999 cannot be sustained.

8. The writ petition is, accordingly, allowed. The order dated 8th March, 1999 is set aside. The appeal against the order in original No.20/97-98 dated 26.11.1997 is restored to the file of the Commissioner of Central Excise (Appeals), Mumbai for fresh hearing and disposal in accordance with law.

9. The petitioner is directed to appear before the Commissioner, Central Excise (Appeals), Mumbai on 20th December, 2004. The Commissioner, Central Excise (Appeals) shall hear the appeal on that day

or any other date that may be fixed by him. No costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)